

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

Docket No. 2004-147-C

In the Matter of:	)
	)
Petition by KMC Telecom III LLC,	)
KMC Telecom V, Inc., and KMC Data LLC )	)
for Arbitration of an Interconnection	)
Agreement with United Telephone	)
Company of the Carolinas Pursuant to	)
Section 252(b) of the Communications	)
Act of 1934, as Amended.	)

**RESPONSE OF UNITED TELEPHONE COMPANY OF THE CAROLINAS  
TO PETITION FOR ARBITRATION OF KMC TELECOM III LLC,  
KMC TELECOM V, INC., AND KMC DATA LLC.**

Pursuant to Section 252(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §151 et. seq. (the “Act”), United Telephone Company of the Carolinas (“Sprint”) hereby submits its Response to the Petition for Arbitration filed by KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data, LLC (“KMC”).

As explained below, the Commission should reject the proposed contract language of KMC, and, as stated herein, adopt Sprint’s proposed contract language.

**RESPONSE TO KMC’S PETITION ON EACH OF THE  
UNRESOLVED ISSUES FOR ARBITRATION**

**A. Designated Contacts**

All communications and submissions in this proceeding, including but not limited to correspondence, notices, inquiries and orders, should be served upon the following designated contacts for Sprint:

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**B. Response to KMC's Statement of Facts and Jurisdiction and Applicable Law**

1. In paragraphs 3-16, KMC sets forth statements of fact and conclusions of law as background to its Petition for Arbitration. While Sprint does not believe that §252 of the Act or the applicable rules of South Carolina administrative procedure require Sprint to respond to each of the factual assertions or be deemed to have admitted the truth of these statements, Sprint generally responds to the allegations in paragraphs 3-9 by stating the following:

2. In response to paragraph 3, Sprint believes that KMC is a certified competitive local exchange telecommunications company ("CLEC") in South Carolina, as stated in the

Petition, but otherwise has no knowledge to admit or deny KMC's allegations concerning its corporate organization or status.

3. In response to paragraph 4, Sprint admits it is an incumbent local exchange carrier as defined in 47 U.S.C. 252(h). As to KMC's claim that Sprint has, at all relevant times, been a monopoly provider of local telephone exchange service, with the advent of competition, Sprint denies that it is a monopoly provider of local telephone exchange services in South Carolina.

4. In response to paragraph 5, concerning the provisions of the federal law, Sprint asserts that these provisions speak for themselves and that, as to the meanings of those provisions expounded by KMC, such statements are conclusions of law that do not require admission or denial by Sprint. Sprint's own positions as to the meaning and applicability of federal law will be addressed in Sprint's response to the individual arbitration issues and in its testimony and other pleadings filed during the course of this arbitration.

5. In response to paragraph 6, Sprint is not able to admit or deny that the parties have an interconnection agreement in South Carolina. Sprint records do not show that the parties have an executed interconnection agreement in South Carolina.

6. In response to paragraph 7, Sprint admits that the parties entered into a Settlement and Release Agreement ("Settlement Agreement") to resolve disputes between the parties, including the payment of reciprocal compensation. To the extent any issues addressed in the Settlement affect issues in the arbitration, Sprint agrees that, if necessary, the Settlement may be provided to the Commission under seal.

7. In response to paragraph 8, Sprint admits that the parties have been engaged in negotiations for an interconnection agreement pursuant to the terms of the Act and that the negotiation window closed on May 21, 2004.

8. In response to paragraph 9, Sprint admits that the parties have held numerous negotiation sessions, both in person and telephone, to discuss the applicable terms, conditions and rates for an interconnection agreement pursuant to the terms of the Act and that KMC has filed this petition for arbitration to resolve the issues for which the parties have been unable to reach agreement, in accordance with the provisions of the Act.

9. In response to paragraph 10, concerning the provisions of the federal law, Sprint asserts that these provisions speak for themselves and do not require admission or denial by Sprint.

10. In response to paragraph 11, Sprint admits that KMC's petition for arbitration was timely filed. As to the statements concerning the provisions of the federal law, Sprint asserts that these provisions speak for themselves and do not require admission or denial by Sprint.

11. In response to paragraphs 12-16, concerning the provisions of the federal law, Sprint asserts that these provisions speak for themselves and that, as to the meanings of those provisions expounded by KMC, such statements are conclusions of law that do not require admission or denial by Sprint. Sprint's own positions as to the meaning and applicability of federal law will be addressed in Sprint's response to the individual arbitration issues and in its testimony and other pleadings filed during the course of this arbitration.

12. In response to paragraph 17, Sprint admits that the Parties have resolved many of the issues. Sprint has attached a draft of the proposed Interconnection Agreement between Sprint and KMC to this Response as "Attachment A" and a matrix of the issues as "Attachment B," both updated as of close of business May 27, 2004. All provisions on which Sprint understands the parties have agreed are shown in normal text. Where there are known unresolved

issues, Sprint's language is shown in **bold** and double underlined text and KMC's proposed language is shown in **bold** and underlined text.

13. To the extent that a failure to do such might be interpreted as an admission of any of the other factual assertions made by KMC and not specifically addressed above, Sprint hereby denies these allegations.

**C. Sprint's Position On Each Unresolved Issue Identified by KMC**

**ISSUE NO. B.5 (Item No. 7)**  
**(Part A, Section 1.59)**

**Issue: Should each Party be required to include limitation of liability language in its end user contracts or tariffs?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. C.2 (Item No. 11)**  
**(Part C, Section 6)**

**Issue: Should the provision of the interconnection regarding security deposits apply to both parties?**

**Legal Requirements:** The FCC recognized in the *Verizon-Virginia Order* that "Verizon has a legitimate business interest in receiving assurances of payment, where warranted, from its competitive LEC customers."<sup>1</sup>

**KMC's Position:** Yes. To the extent Sprint insists on including a provision regarding security deposits in the interconnection agreement, the provision should be applied equally to both KMC and Sprint. Sprint's position is discriminatory and assumes that KMC is not entitled to any assurance of future payment from Sprint.

**Sprint's Position:** Sprint requires all CLECs that have not established a satisfactory payment history to pay a security deposit to ensure payment for services under the interconnection

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<sup>1</sup> *Verizon-Virginia Order* at ¶ 727.

agreement. Sprint does not believe it is appropriate, warranted, or necessary to make the deposit provisions reciprocal.

Deposit provisions exist to impart a needed degree of assurance when there is uncertainty regarding the financial status of a contracting party, and in the case of Sprint there is no such uncertainty. As an ILEC, Sprint has the unilateral obligation of providing unbundled elements (“UNEs”) and resold service to KMC and therefore bears much more risk than does KMC. Furthermore, Sprint, as the ILEC, has the obligation to offer to provide the terms and conditions in interconnection agreements equally to all requesting carriers. KMC is not under the same obligations.

The Nevada Commission recently issued an order in an arbitration between MCI WorldCom Communications, Inc. and Central Telephone Company Nevada, d/b/a Sprint of Nevada, agreeing with Sprint that “The Commission adopts the position that it is appropriate for the agreement to contain language that requires deposits, but does not believe the deposits need be reciprocal.”<sup>2</sup>

Sprint’s standard language is clear in that, in the absence of concrete information regarding the credit-worthiness of the contracting party, or where the CLEC has a history of late payments, deposits are required. To make such language “reciprocal” would be pointless since there is no shortage of information regarding Sprint’s credit-worthiness.

Compliance with Legal Requirements: The deposit language is not discriminatory and Sprint includes security deposit language in all interconnection agreements.

**ISSUE NO. C.5 (Item No. 14)**  
**(Part C, Section 4.10)**

**Issue:** Should bill-and-keep apply to VoIP calls, to the extent they can be identified, until the proper regulatory classification of VoIP is resolved by the appropriate federal or state regulatory or judicial body?

**Legal Requirements:** The FCC recently issued orders in two separate proceedings requesting a determination regarding the appropriate compensation for the services specified in the petitions .

(FCC 04-27, WC Docket No. 03-45<sup>3</sup> and FCC 04-97, WC Docket No. 02-361<sup>4</sup>). In its order addressing the AT&T Petition, the FCC determined that

The service at issue in AT&T's petition consists of an interexchange call that is initiated in the same manner as traditional interexchange calls – by an end user who dials 1 + the called number from a regular telephone. When the call reaches AT&T's network, AT&T converts it from its existing format into an IP format and transports it over AT&T's Internet backbone. AT&T then converts the call back from the IP format and delivers it to the called party through local exchange carrier (LEC) local business lines. We clarify that, under the current rules, the service that AT&T describes is a telecommunications service upon which interstate access charges may be assessed.

AT&T Petition, Order at paragraph 1 (footnotes omitted).

For the service identified in the pulver.com Petition, the FCC determined that the service was an “information service” and not subject to access. In both cases only a specific type of traffic was presented to the FCC and subsequently addressed. VoIP traffic should not be treated differently than voice traffic; existing rules for voice traffic should apply. 47 C.F.R. 51.701.

**KMC's Position:** Yes, bill-and-keep should apply to VoIP calls, to the extent they can be identified, until the proper regulatory classification of VoIP is determined. Since the FCC has not made a definitive ruling on the regulatory classification of VoIP traffic, the interconnection

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<sup>2</sup> In Re Petition of MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with Central Telephone Company – Nevada concerning Interconnection and Resale Under the Telecommunications Act of 1996; Docket No. 03-8009. See p. 3 at ¶ 16.

<sup>3</sup> In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges; Docket No. 02-361 (“AT&T Petition”).

<sup>4</sup> In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service; Docket No. 03-45 (“pulver.com Petition”).

agreement should not contain any provision that prejudices that classification. However, to the extent that any VoIP calls are exchanged and can be identified as such, they should be exchanged on a bill-and-keep basis.

**Sprint's Position:** KMC's position, as expected, is for the Commission to maintain the status quo and let another regulatory body make the decision. In the meantime, carriers will continue to use and expand the use of VoIP technology to effectively undermine the existing access charge regime. Sprint urges the Commission to address this critical issue. The Commission clearly has jurisdiction, the issue is ripe for treatment, and the timing is critical.

Sprint has become aware of a variety of network arrangements deployed by carriers using, at least in part, IP transport for interexchange telecommunications that originate and terminate not over access trunks, but over local interconnection trunks and other facilities, thus avoiding access charges. There is little doubt that today carriers are using IP transport technology to evade paying access charges and the evidence filed in the current FCC proceedings substantiate this fact.

Sprint disagrees that VoIP calls should be compensated on a bill and keep basis. The FCC determined that phone-to-phone IP telephony traffic where there is no net protocol conversion should be subject to access. There is no indication from the FCC or any regulatory body that fair compensation for all forms of VoIP is not appropriate. In fact, quite the opposite is true; paragraph 61 of the FCC's NPRM on IP Enabled Services suggests just the opposite. The FCC recognized in its Notice of Proposed Rulemaking that access charges may apply even if providers of VoIP or IP-enabled services are not classified as interexchange carriers, or the services are not classified as telecommunications service. *In the Matter of IP-Enabled Services*, WC Docket No. 04-46, rel. March 10, 2004 at paragraph 61.



Compensation for all VoIP calls should be on the same basis as voice traffic (i.e. reciprocal compensation, intrastate access or interstate access depending on the proper determination of the jurisdiction ).

KMC also references the federal District Court in Minnesota in *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, Civil File No. 03 -5287, Memorandum and Order of October 16, 2003 (D. Minn.). The New York Public Service Commission reached a different conclusion and determined that Vonage is subject to regulation as a telephone corporation. *Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law*, Case 03-C-1285. Based on Sprint's understanding of the services offered by KMC, the federal District Court decision is not applicable or relevant to services KMC is offering and the issue raised in this arbitration.

**Compliance with Legal Requirements:** Sprint's language is consistent with existing legal requirements.

**ISSUE NO. E.22 (Item No. 18)**  
**(Part E, Section 8.3.1)**

**Issue: Should Sprint be permitted to begin billing KMC for a loop before confirmation that the loop is working?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E25 (Item No. 19)**  
**(Part E, Sections 8.3.6 and 8.3.7)**

**Issue: Should Sprint conduct cooperative trouble testing when KMC isolates a problem to Sprint's network?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E.77 (Item No. 29)**  
**(Part E, Section 21.2.2)**

**Issue: May Sprint prohibit KMC from commingling UNEs with wholesale services purchased from a third party? Should the parties' interconnection agreement state that Sprint will provide UNEs pursuant to applicable law?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E.80 (Item No. 32)**  
**(Part E, Section 21.2.5)**

**Issue: Should Sprint be permitted to audit KMC's UNE-P customer base?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E.92 (Item No. 39)**  
**(Part E, Section 21.4.2.5.7)**

**Issue: What eligibility criteria apply to EEL access?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E.94 (Item No. 41 )**  
**(Part E, Section 22.3)**

**Issue: Should Sprint be required to comply with FCC rules requiring line-splitting?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. E.95 (Item No. 42 )**  
(Part E, Section 22.3.1)

**Issue:** What rates, terms and conditions should apply to line-splitting provided by Sprint?

**Legal Requirements:** 47 C.F.R. 51.319(a)(1)(ii)(A) and (B) specify the requirements for line splitting. The charges for line splitting should be consistent with 47 U.S.C. 252(d)(1).

**KMC's Position:** Proposed language provides that within ninety (90) days of the effective date of the interconnection agreement, Sprint shall institute procedures to allow KMC or another carrier to order HFS data capabilities on a UNE loop.

**Sprint's Position:** The parties have reached agreement on the terms and conditions applicable to line splitting. The only issue that remains open is the appropriate monthly recurring costs (MRCs) that apply to a line splitting arrangement. Sprint is entitled to recover the costs it incurs in providing line splitting to CLECs. The CLEC that purchases the loop compensates Sprint for the full cost of the loop however additional charges to implement the line splitting arrangement apply. Applicable monthly recurring charges for line splitting pertain to DS0 cable (in 100 pair increments). Depending on KMC's arrangement, additional DS0 cable extending between the collocation arrangement and Sprint's mainframe may be necessary to gain access to unbundled loops and/or to connect line splitting equipment owned by the second CLEC involved (e.g. DSLAM) to KMC's line splitting equipment (e.g. line splitter). In addition, MRC's apply for co-carrier DS0 cabling when attached to Sprint owned cable racking.

**Compliance with Legal Requirements:** Sprint's line splitting offering complies with applicable rules and regulations, including 47 C.F.R. 51.319(a)(1)(ii)(A) and (B) and 47 U.S.C. 252(d)(2).

**ISSUE NO. E.97, E.98 and E.99 (Items No. 44, 45 and 46)**  
(Part E, Section 23.1, 24.1.1 and 24.1.2)

**Issue:** Should Sprint perform routine network modifications in accordance with FCC rules? (E97) Should Sprint be permitted to impose loop charges which are not approved by the Commission? (E98) Should Sprint be permitted to impose dedicated transport charges which are not approved by the Commission? (E99)

**Legal Requirements:** 47 C.F.R. 51.319(a)(8) and (e)(5) set forth the requirements for routine network modifications. The FCC stated in paragraph 640 of the TRO:

The Commission's pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications we require here. State commissions have discretion as to whether these costs should be recovered through non-recurring charges or recurring charges.

TRO, para. 640 (footnotes omitted).

**KMC's Position: E.97:** Yes. Sprint must provide notification to KMC when an order is "Pending" or "No Facilities" when KMC's order requires the construction of a new local loop from scratch by trenching or pulling cable. Sprint shall provide such notification within two (2) business days of order receipt and shall specify whether the orders are rejected due to "Pending" facilities, "No" facilities, or additional construction required. Sprint shall include verification that all equipment and facility options have been reviewed for availability to provision the requested service, including without limitation, spare or retired copper facilities, next generation equipment and availability of spare timeslots on channel banks. Further, Sprint shall make available, where technically feasible, alternative service options to provide services by the requested due date, including but not limited to Resale services at UNE rates or spare channels on a digital DS1. Such alternatives shall be subject to joint KMC -Sprint technical discussion and review. Following such review, KMC will make the final decision to proceed with a service provisioning alternative.

**E.98:** No. Sprint recovers the cost of routine network modifications to unbundled loop facilities in its monthly recurring rates for the unbundled loop. While the FCC clarified what is encompassed by “routine network modifications,” it did not create new obligations of the nature that would permit Sprint to assess new charges.

**E.99:** No. Sprint recovers the cost of routine network modifications to unbundled dedicated transport facilities in its monthly recurring rates for the unbundled transport. While the FCC clarified what is encompassed by “routine network modifications,” it did not create new obligations of the nature that would permit Sprint to assess new charges.

**Sprint’s Position:** The parties have tentatively agreed to the appropriate terms and conditions for issues E.97, E.98 and E.99. The only remaining open issue is the appropriate charges for routine network modifications. Contrary to KMC’s assertion, the Act and FCC rules do not require ILECs to provide access to network elements for free. The TRO states “State commissions have discretion as to whether these costs should be recovered through non-recurring charges or recurring charges.” TRO at paragraph 640. In addition state commissions may ensure that double recovery does not occur. *Id.* This arbitration proceeding provides the procedural safeguard envisioned by the FCC. Consistent with the TRO, Sprint seeks cost recovery for routine network modifications for those occasions where such costs are not included in its TELRIC loop and transport rates. Sprint will assess charges for routine network modifications made on behalf of KMC to the extent that costs are not already recovered in the unbundled loop and transport (NRC and monthly recurring rates (MRC)) rates and consistent with 47 U.S.C. 252(d)(3) and FCC rules and regulations.

**Compliance with Legal Requirements:** Sprint’s proposed language and rates are consistent with the applicable rules, regulations and TRO provisions.

**ISSUE NO. F.9 (Item No. 61)**

**Part F, Section 1.2.1**

**Issue: Should Sprint be allowed to designate and establish its own Point of Interconnection (POI) for the delivery of Sprint-originated traffic?**

**Legal Requirements:** 47 C.F.R. 51.305(a) governs the CLEC's right to select the POI. Sprint is not requesting the right to select a different POI, but the ability to self-provision transport for its originated traffic from the POI to the CLEC's network.

**KMC's Position:** No. KMC has sole discretion under the Communications Act and the FCC's rules to designate the point of interconnection ("POI") between KMC and an ILEC, including Sprint, and KMC is required to establish only one POI per LATA.

**Sprint's Position:** Sprint is not proposing that it be allowed to designate its own POI on KMC's network. Sprint recognizes that FCC rules allow the CLEC to select the POI on the ILEC's network. See 47 C.F.R. 51.305(a). Finally, the ILEC interconnection obligations included in §251(c)(2) of the Act and codified in Part 51 of the FCC's rules are all directed at allowing the CLEC to select a point of interconnection on the ILEC network.

Sprint's proposed version of section 1.2.1 of Part F allows Sprint, at its option, to self-provision transport and deliver its traffic at a location on KMC's network. Sprint recognizes that in certain cases it may make economic and technical sense for Sprint to have the option to self-provision transport to KMC's network. For example, Sprint may have facilities at or near a KMC end office which would make it more economical for Sprint to provision the transport to KMC at that location rather than hauling the traffic to another more distant POI. Certainly, the FCC rules mandate that a POI be on the ILEC's network, but Sprint's version of section 1.2.1 of Part F gives the parties the option of Sprint providing its own transport to KMC's network, if it is more efficient and economical for Sprint to do so.

**ISSUE NO. F.11 (Item No. 63)**  
**(Part F, Section 1.2.5)**

**Issue: Must KMC pay Sprint for the transport and delivery to KMC of VNXX-enabled, Sprint-originated ISP-bound calls?**

**Legal Requirements:** The FCC rules do not address the transport of ISP-bound calls to the POI.

See *ISP Remand Order* at ¶ 102.<sup>5</sup> This Commission has previously ordered that a CLEC can have a single POI in a LATA, but “shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI.” . *In re Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C; Order No. 2001-079 (“AT&T Arbitration”). In addition, this Commission has already determined that intrastate access charges should apply to calls to a NPA/NXX in a local calling area outside the local calling area where the NP A/NXX is homed rather than reciprocal compensation. *Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Docket No. 2002-181-C, Orders No. 2002-619 and 2002, 661 (“US LEC Arbitration”); *In re Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order No. 2001-045 (“Adelphia Arbitration”).

**KMC’s Position:** No. Sprint should pay the cost of transporting Sprint-originated calls to the KMC-designated POI, and KMC should pay all transport costs on its side of the POI. Moreover, Sprint may not force KMC to pay for the transport of ISP-bound traffic, originated by Sprint

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<sup>5</sup> *Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order* (“ISP Remand Order”).

customers, to the designated POI, since Sprint is not entitled to shift to KMC the cost of calls originating on Sprint's network. It is the originating carrier's responsibility (in this case, Sprint's) to deliver, without charge, its originating calls to the CLEC -designated POI pursuant to 47 C.F.R. § 51.703(b). Since FCC rules prohibit ILECs from assessing charges on CLECs for telecommunications traffic that the ILECs originate on their network, requiring KMC to provide the transport (or reimburse Sprint for the costs of such transport) between the originating local calling area and the designated distant POI would directly contravene governing law.

**Sprint's Position:** KMC proposes that Sprint should deliver all Sprint -originated ISP-bound traffic to the POI and bear the cost of this transport without any compensation. In its petition, KMC states the basis of its position as FCC Rule § 51.703(b), which provides that for traffic subject to reciprocal compensation, a carrier may not assess charges for traffic that originates on its network. Since ISP-bound traffic is not traffic subject to reciprocal compensation, pursuant to the FCC's ruling in the *ISP Remand Order*, this rule does not apply to such traffic. In the *ISP Remand Order* the FCC did not address the issue of compensation for transport of those calls. *ISP Remand Order* at ¶102.

KMC also cites to the Fifth Circuit Court of Appeals decision in *Southwestern Bell Tel. Co. v. Tex. PUC*, 348 F.3d 482 (5<sup>th</sup> Cir. 2003). In the *Southwestern Bell* case, the court relied on 47 C.F.R. 703(b). However, 47 C.F.R. 51.703(b) only applies to voice traffic and does not apply to ISP-Bound traffic.

Contrary to KMC's position, Sprint does not agree that under existing South Carolina precedent, it should be obligated to absorb the cost of the transport of ISP-bound calls to a single POI in the LATA. Rather, for this one-way traffic, Sprint believes that both parties should share in this transport burden. Sprint's position is consistent with this Commission's decision in the AT&T Arbitration. In that decision the Commission stated "that BellSouth should not be



required to deliver free of charge its local traffic outside the local service area in which the call originates.” The Commission concluded “that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. That is the fair and equitable result.”

This Commission stated in the Adelphia Arbitration decision that “BellSouth is only required to deliver traffic at no charge within a local service area, and as the typical “virtual NXX” traffic terminates outside the local service area, BellSouth is not required to deliver that “virtual NXX” traffic at no charge.” Furthermore, the Commission acknowledged the ISP Remand order in the US LEC Arbitration and, citing to paragraph 37 of that order, the Commission affirmed its decision. US LEC Arbitration at page 23.

Sprint is merely requesting that this Commission affirm its prior rulings and afford Sprint the same compensation arrangements that have been allowed for other ILECs.

**ISSUE NO. I.34 (Item No. 124)**  
**(Part I, Section 3.1.15-3.6)**

**Issue: What should be the appropriate process for billing disputes?**

It is Sprint’s understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE PART J.1 (Item No. 162)**  
**(Part J)**

**Issue: By what measures and standards should Sprint’s performance be measured?**

**Legal Requirements:** Sprint is required to provide interconnection and UNEs on a nondiscriminatory basis. See 47 U.S.C. § 251(c). Sprint provides performance measurement data specific to South Carolina consistent with the performance measurement plans approved by the Florida Public Service Commission, the North Carolina Utilities Commission and the Public Utilities Commission of Nevada .

**KMC's Position:** Sprint's performance should be measured utilizing the same measures and standards as Bellsouth's, since these performance measures and standards have been fully developed with the participation of many carriers.

**Sprint's Position:** Sprint's Performance Measurement Plan (PMP) is appropriate for Sprint and is used by Sprint for all CLECs in all states where Sprint is an incumbent local exchange company. Sprint's PMP also was fully developed with the participation of many carriers. KMC's request to impose the performance measures applied to BellSouth on Sprint, as opposed to the Sprint performance measures, is not appropriate.

**ISSUE NO. J.2 (Item No. 163)**  
**(Part I, Section 4.7.1)**

**Issue: What remedies should be put into place to ensure that Sprint's performance meets appropriate standards?**

**Legal Requirements:** None.

**KMC's Position:** Sprint's performance should be subject to remedies analogous to those that apply to BellSouth in order to efficiently ensure that Sprint complies with its obligations under law and the Agreement. The remedy plan adopted by the Commission to ensure adequate performance by BellSouth should be applied, on a pro-rata basis, to Sprint, since both ILECs are similarly situated in the wholesale/retail marketplace.

**Sprint's Position:** KMC contends that Sprint should be subject to remedies analogous to BellSouth. Sprint's performance measures are based on Sprint's procedures and the markets that Sprint serves. The remedies applicable to BellSouth are not appropriate for Sprint.

**ISSUE NO. K.8 (Item No. 171)**  
**(Part K, Section 3.3)**

**Issue: Is KMC allowed under prevailing law to share cageless collocation space?**

**Legal Requirements:** 47 C.F.R. 51.323(k) requires ILECs to offer shared caged collocation, cageless collocation and adjacent collocation and does not identify shared cageless as a type of required collocation. *See Advanced Services Order* at ¶ 41.<sup>6</sup>

**KMC's Position:** Yes. One of the principles underlying the FCC's collocation rules and decisions is that the ILEC should not be permitted or encouraged to foist unnecessary collocation costs upon the CLECs. Restricting KMC's ability to sublease an unused portion of its cageless collocation space would be contrary to the FCC's collocation principles. In addition, there are no technical impediments to sharing a cageless collocation space.

**Sprint's Position:** The FCC rules specify that an ILEC must offer shared collocation cages to CLECs. The rules do not require shared cageless collocation. *See* 47 C.F.R. 51.323(k)(1) (Shared Collocation Cages); and the *Advanced Services Order* at ¶ 41. Sprint does not offer shared cageless collocation. KMC's stated concern for gaining access to other carriers is easily accommodated through low priced co-carrier cross connects.

**ISSUE NO. K.18 (Item No. 181)**  
**(Part K, Section 4.3)**

**Issue: When will cross-connects charge apply?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. K.32 (Item No. 195)**  
**(Part K, Section 8.7)**

**Issue: Should billing for terminations begin only when services are ordered to those terminations via ASR or and LSR?**

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<sup>6</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Services Capability*, Docket No. 98-147, Order rel. March 31, 1999. ("Advanced Services Order").

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. K.40 (Item No. 203)**  
**(Part K, Section 12.2.1)**

**Issue:** Should KMC be allowed to provision cross-connects within its collocation space without application or additional charges by Sprint?

**Legal Requirements:** *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, rel. August 8, 2001 and Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, rel. September 4, 2002.

**KMC's Position:** Yes, KMC is entitled to provision its own cross-connects within its own collocation space without being required to submit a collocation application or being subject to additional Sprint charges.

**Sprint's Position:** Sprint agrees that KMC may provision its own cross-connects that are entirely within KMC's collocation space or between adjacent collocation spaces without being required to submit a collocation application or being subject to additional Sprint charges.

**ISSUE NO. K.41 (Item No. 204)**  
**(Part K, Section 12.3)**

**Issue:** Should Sprint be permitted to limit KMC's right to cross-connect with other collocated carriers?

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. K.42 (Item No. 205)**  
**(Part K, Section 12.4)**

**Issue:** Should Sprint have sole discretion over whether KMC may use its own technicians to deploy Direct connects?

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. K.44 (Item No. 207)**  
**(Part K, Section 12.6)**

**Issue: Should KMC be allowed to use its own technicians to install CCXCs?**

It is Sprint's understanding that the parties have reached agreement on this issue and, therefore, arbitration of this issue is no longer necessary.

**ISSUE NO. K.48 (Item No. 211)**  
**(Part K, Section 13.3)**

**Issue: May KMC utilize space capacity on an existing interconnector's entrance facility for the purpose of providing an entrance facility to its collocation arrangement?**

**Legal Requirements:** *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, rel. August 8, 2001 and Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, rel. September 4, 2002.

**KMC's Position:** Yes.

**Sprint's Position:** An entrance facility should terminate to one location in Sprint's central office. Sprint will allow KMC to interconnect with third party facilities in Sprint's central office using co-carrier cross connects. Consistent with the FCC rules and orders KMC may install cross-connects within its shared collocation cage or between adjacent collocation arrangements (subject to Sprint provision of a cable tray). Sprint is not required to allow carriers to deploy cross-connects in the common area of Sprint's central office.

**D. Sprint's Additional Issues for Arbitration**

**ISSUE NO. K.20 (Item No. 183)**  
**(Part K, Section 5.1.2)**

**Issue: What should be the timeframe for Sprint to complete simple augments and what fee should apply?**

**Legal Requirements: None.**

**KMC's Position:** The Application Augment Fee should vary based on the level of assessment needed for the augment. Where the augment only requires administrative work by Sprint, an Administrative Only Application Fee should apply. Simple augments should be completed within twenty (20) calendar days after receipt of the BFFO, while Intermediate Augments should be completed within sixty (60) days after receipt of the BFFO and Major Augments within seventy-five (75) or ninety (90) days after receipt of the BFFO.

**Sprint's Position:** Sprint offers two levels of augments: minor and major. Examples of minor augments are DC power fuse changes (where no other power work is involved) and/or installation of occasional use AC circuits (where sufficient capacity exists). Examples of major augments are all requests for additional space (bay or cage space), additions or removals of cable terminations (cross-connects), power cabling and/or entrance facility cabling, and installation or removal of racking or other support structure. Three different fees are applicable based on the level of work to be performed. An augment application fee is assessed with the request for augment and covers work involved with processing the application including an engineering evaluation. If the augment requires additional work on behalf of Sprint, an administrative and project management fee, and/or a transmission engineering fee may be assessed at the time of firm order.

Intervals for augment requests include Price Quote and Space Availability within thirty (30) days from the receipt of the augment application. The Construction Phase varies by augment level. Construction for minor augments will be completed within forty-five (45) days from the date of firm order. Construction for major augments will be completed within ninety (90) days from the date of firm order.

## **Part K, Sections 3.6.7 and 3.6.8**

**Legal Requirements:** The FCC does not require ILECs to allow in-place conversions of virtual collocation arrangements to physical collocation arrangements. *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order at Paragraph 17.

**KMC's Position:** KMC should be allowed to convert virtual collocation to physical collocation without relocating its equipment.

**Sprint's Position:** Sprint will allow the conversion of virtual collocation to physical collocation.

Sprint proposes the following language to replace KMC's proposed language in sections 3.6.7 and 3.6.8:

Virtual Collocation Transition. Upon request by KMC, virtual collocation arrangements provisioned prior to the availability of physical cageless collocation in a P remise may be converted to physical collocation arrangements. In converting such arrangements, the Sprint may require KMC to relocate its equipment. If relocation is required, Sprint will make reasonable efforts to avoid unnecessary relocation of equipment that KMCs request to convert from virtual to physical collocation. Sprint will also take appropriate steps to minimize inconveniences to KMC and the risks of service disruptions to KMC's customers. Upon conversion from virtual to physical, equipment ownership will revert back to KMC. KMC's cageless rack space will be clearly marked through floor - markings or other identification; and KMC will comply with all security requirements applicable to cageless collocation. KMC will not be required to bear the cost of relocating virtually-collocated equipment in Sprint's Premises in order to convert it to cageless collocation, provided that no additions or reconfigurations of that equipment are necessary; however, relocation may be required if there is any commingling of equipment either with Sprint or another CLEC.

## **CONCLUSION**

Wherefore, for the reasons set forth herein, based on the evidence that will be presented on the record in this matter, Sprint requests that its positions with respect to the disputed issues be adopted and incorporated into the parties' interconnection agreement.

Respectfully submitted this 18<sup>th</sup> day of June, 2004.

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